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असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on 1st July, 1977.—

BILL NO. 58 OF 1977

A Bill to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows.---

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Mental Health Act, 1977.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint, and different dates may be appointed for different States and for different provisions of this Act, and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision

2. In this Act, unless the context otherwise requires,—

(a) "cost of maintenance", in relation to a mentally ill person admitted in a mental hospital or mental nursing home, shall be the

Short
title,
extent
and com-
mence-
ment.

Defini-
tions.

cost of such items as the State Government may, by general or special order, specify in this behalf, and shall, unless the State Government otherwise directs, include—

(i) the cost of lodging, boarding, clothing, medicine or any other amenity provided to such person in any mental hospital or mental nursing home and the expenditure for his treatment and care therein; and

(ii) the expenditure incurred for removing a mentally ill person to, and from, any mental hospital or mental nursing home;

(b) "District Court" means, in any area for which there is a city civil court, that court, and in any other area, the principal civil court of original jurisdiction, and includes any other civil court which may be empowered by the State Government, by notification, to deal with the matters specified in this Act;

(c) "Inspecting Officer" means a person authorised by the State Government or by the licensing authority to inspect any mental hospital or mental nursing home;

(d) "licence" means a licence granted under section 6;

(e) "licensee" means a holder of a licence;

(f) "licensing authority" means such officer or authority as may be specified by the State Government to be the licensing authority for the purposes of this Act;

(g) "licensed mental hospital" and "licensed mental nursing home" mean, respectively, a mental hospital and a mental nursing home, licensed, or deemed to be licensed, under this Act;

(h) "Magistrate" means—

(i) in relation to a metropolitan area, a Metropolitan Magistrate;

(ii) in relation to any other area, the Chief Judicial Magistrate, Sub-Divisional Judicial Magistrate or any other Magistrate of the first class empowered by the State Government to perform the functions of a Magistrate under this Act;

(i) "medical officer" means a gazetted medical officer in the service of Government and includes a medical practitioner declared, by a general or special order of the State Government, to be a medical officer for the purposes of this Act;

(j) "medical officer in charge", in relations to any mental hospital or mental nursing home, means a medical officer in charge of that hospital or nursing home;

(k) "medical practitioner" means a person who possesses a recognised medical qualification as defined in clause (h) of the Indian Medical Council Act, 1956, and whose name has been entered in a State Medical Register in accordance with the provisions of that Act or a person whose name has been registered in a State Medical Register in accordance with the provisions of any other law relating to registration of medical practitioners for the time being in force.

(l) "mental hospital" and "mental nursing home" means respectively, a hospital, or, as the case may be, a nursing home established or maintained by the Government or any other person or authority for the treatment and care of mentally ill persons and includes any portion in such hospital or nursing homes set apart for the treatment and care of mentally ill person;

(m) "mentally ill offender" means a mentally ill person for whose detention in, or removal to, a mental hospital, mental nursing home, jail or other place of safe custody, an order has been made in accordance with law;

(n) "mentally ill person" means a person who is in need of psychiatric treatment by reason of mental disorder or mental deficiency or of some disturbance in his behaviour or mental state and includes a person who has all or any of the clinical conditions-known as psychoses, psychoneuroses, psychopathic state, addiction, mental sub-normality or psychosomatic disorder or such other condition of like nature as may be prescribed;

(o) "minor" means a person who has not completed the age of eighteen years;

(p) "notification" means a notification published in the Official Gazette;

(q) "prescribed" means prescribed by rules made under this Act;

(r) "psychiatrist" means a medical practitioner possessing a post-graduate degree or diploma in psychiatry, recognised by the Medical Council of India, constituted under the Indian Medical Council Act, 1956, and includes, in relation to any State, any other person who, having regard to his knowledge and experience in psychiatry, has been declared by the Government of that State to be a psychiatrist for the purposes of this Act;

(s) "reception order" means an order made under the provisions of this Act for the admission and detention of a mentally ill person in a mental hospital or a mental nursing home;

(t) "relative" includes any person related to the mentally ill person by blood, marriage or adoption;

(u) "State Government" in relation to a Union territory means the Administrator thereof;

(v) "temporary treatment order" means temporary order passed by a Magistrate under sub-section (5) of section 19.

CHAPTER II

MENTAL HOSPITALS AND MENTAL NURSING HOMES

3. (1) The Central Government may, in any part of India, or the State Government may, within the limits of its jurisdiction, establish and maintain mental hospitals or mental nursing homes for the admission, treatment and care of mentally ill persons at such places as it thinks fit,

Establishment and maintenance of mental hospital and mental nursing homes.

and separate mental hospitals and mental nursing homes may be established and maintained for,—

- (a) those who are under the age of eighteen years,
- (b) those who have been convicted of any offence, and
- (c) those belonging to such other class or category of persons as may be prescribed.

(2) Where a mental hospital or mental nursing home is established or maintained by the Central Government, any reference in this Act to the State Government shall, in relation to such hospital or nursing home, be construed as a reference to the Central Government.

Establishment and maintenance of mental hospital or mental nursing home only with licence.

4. (1) On and after the commencement of this Act, no person shall establish or maintain a mental hospital or mental nursing home unless he holds a valid licence granted to him under this Act.

Provided that an asylum, licensed by the Central Government or any State Government and maintained as such immediately before the commencement of this Act, may continue to be maintained, and shall be deemed to be a licensed mental hospital or licensed mental nursing home, as the case may, under this Act,—

- (a) for a period of three months from such commencement, or
- (b) if an application made in accordance with section 5 for a licence is pending at the expiration of the period specified in clause (a), till the disposal of such application.

(2) Nothing contained in sub-section (1) shall apply to a mental hospital or mental nursing home established or maintained by the Central Government or State Government.

Application for licence.

5. (1) A person, who holds, at the commencement of this Act, a valid licence authorising him to establish or maintain any mental hospital or mental nursing home, shall, if he intends to establish or continue the maintenance of such hospital or nursing home after the expiry of the period of validity of such licence, make, at least one month before the expiry of such period, an application to the licensing authority in such form and be accompanied by such fee, as may be prescribed for the grant of a fresh licence for the establishment or maintenance of such hospital or nursing home, as the case may be.

(2) A person, who intends to establish or maintain, after the commencement of this Act, a mental hospital or mental nursing home, shall unless he already holds a valid licence, make an application to the licensing authority in such form and be accompanied by such fee, as may be prescribed for the grant of a licence.

Grant or refusal of licence.

6. On receipt of an application under section 5, the licensing authority shall make such inquiries as it may deem fit and where it is satisfied that,—

- (a) the establishment and maintenance of the mental hospital or mental nursing home or the continuance of the maintenance of any such hospital or nursing home established before the com-

mencement of this Act is necessary having regard to the needs of the area in which such hospital or nursing home is proposed to be established and maintained or continued to be maintained;

(b) the applicant is in a position to provide the minimum facilities prescribed for the admission, treatment and care of mentally ill persons; and

(c) the mental hospital or the mental nursing home will be under the charge of a medical officer, who is a psychiatrist,

it shall grant a licence to the applicant in the prescribed form, and where it is not so satisfied, the licensing authority shall, by order, refuse to grant the licence applied for:

Provided that, before making any order refusing to grant a licence, the licensing authority shall give to the applicant a reasonable opportunity of being heard and every order of refusal to grant a licence shall set out therein the reasons for such refusal and such reasons shall be communicated to the applicant in such manner as may be prescribed.

7. A licence shall not be transferable or heritable.

Licence
not trans-
ferable or
heritable.

8. Every licence shall, unless revoked earlier under section 11, be valid for a period of five years from the date on which it is granted.

Duration
of licence.

9. A licence may be renewed, from time to time, on an application made in that behalf in such form and be accompanied by such fee as may be prescribed, to the licensing authority and every such application shall, as far as may be, be made one year before the date on which the period of validity of the licence is due to expire:

Renewal of
licence.

Provided that renewal of a licence shall not be refused unless the licensing authority is satisfied that—

(i) having regard to the needs of the area, renewal of the licence is not necessary; or

(ii) the licensee is not in a position to provide in the mental hospital or mental nursing home the minimum facilities prescribed for the admission, treatment and care therein of mentally ill persons; or

(iii) the licensee is not in a position to provide a medical officer to take charge of the mental hospital or mental nursing home; or

(iv) the licensee has contravened any provisions of this Act or any rule made thereunder.

Licensee
to main-
tain
mental
hospital
and men-
tal nurs-
ing home
in accord-
ance with
prescrib-
ed condi-
tions.

10. Every licensee shall maintain the mental hospital or the mental nursing home in such manner and subject to such conditions as may be prescribed.

Revoca-
tion of
licence.

11 (1) The licensing authority may, without prejudice to any other penalty that may be imposed on the licensee, by order in writing, revoke the licence if it is satisfied that—

(a) the mental hospital or the mental nursing home is not being maintained by the licensee in accordance with the provisions of this Act or the rules made thereunder, or

(b) the maintenance of the hospital or nursing home is being carried on in a manner detrimental to the moral and physical well-being of the inpatients thereof:

Provided that no such order shall be made except after giving the licensee a reasonable opportunity of being heard, and every such order shall set out therein the grounds for the revocation of the licence and such grounds shall be communicated to the licensee in such manner as may be prescribed.

(2) Every order made under sub-section (1) shall contain a direction to the licensee that the inpatients of the mental hospital or mental nursing home shall be transferred to such other mental hospital or mental nursing home as may be specified in that order.

(3) Every order made under sub-section (1) shall take effect,—

(a) where no appeal has been preferred against such order under section 12, immediately on the expiration of the period prescribed for such appeal; and

(b) where such appeal has been preferred and the same has been dismissed, from the date of the order of dismissal.

Appeal.

12. (1) Any person, aggrieved by an order of the licensing authority refusing to grant or to renew a licence or revoking a licence, may, in such manner and within such period as may be prescribed, prefer an appeal to the State Government:

Provided that the State Government may entertain an appeal preferred after the expiration of the prescribed period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) Every appeal under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

13. (1) An Inspecting Officer may, at any time, enter and inspect any mental hospital or mental nursing home and require the production of any records, which are required to be kept in accordance with the rules made in this behalf, for inspection:

Provided that such inspection shall be carried out in the presence of the medical officer in charge or of any person authorised by him.

(2) The Inspecting Officer may interview in private any patient receiving treatment and care therein

(a) for the purpose of inquiring into any complaint made by or on behalf of such patient as to the treatment and care, or

(b) in any case, where the Inspecting Officer has reason to believe that any inpatient is not receiving proper treatment and care,

and where the Inspecting Officer is a medical practitioner, he may also examine the patient in private and may require the production of any medical records relating to the treatment and care of the patient in the hospital or nursing home and inspect the same.

(3) Where the Inspecting Officer is satisfied that any inpatient in a mental hospital or mental nursing home is not receiving proper treatment and care, he may report the matter to the licensing authority and thereupon the licensing authority may issue such directions as it may deem fit to the licensee of the mental hospital, or, as the case may be, the mental nursing home and every such licensee shall be bound to comply with such directions.

14 Every licensed mental hospital or licensed mental nursing home shall provide such facilities as may be prescribed for the treatment of every mentally ill person, whose condition does not warrant his admission as an inpatient or who, for the time being, is not undergoing treatment as inpatient.

Inspection of mental hospitals and mental nursing homes and visiting of patients.

Treatment of out-patients.

CHAPTER III

ADMISSION AND DETENTION IN MENTAL HOSPITAL OR MENTAL NURSING HOME

PART I

Admission on voluntary basis

15. (1) Any person (not being a minor), who considers himself to be a mentally ill person and desires to be admitted to any mental hospital or mental nursing home for treatment, may make an application in that behalf to the medical officer in charge for being admitted as a voluntary patient.

Application for admission as voluntary patient.

(2) Where the guardian of a minor considers his ward to be a mentally ill person and desires the ward to be admitted to any mental hospital or mental nursing home for treatment, he may make a like application to the medical officer in charge for admitting the ward as a voluntary patient.

(3) On receipt of an application under sub-section (1), or sub-section (2), the medical officer in charge shall make such inquiries as he may deem fit and if satisfied that the applicant or, as the case may be, the minor requires treatment as an inpatient in the mental hospital or mental nursing home, he may admit such applicant or, as the case may be, the minor as a voluntary patient.

Payment
of cost
of main-
tenance in
licensed
mental
hospital
or
mental
nursing
home.

16. Every voluntary patient, who is admitted to any licensed mental hospital or licensed mental nursing home, shall be liable to pay the cost of his maintenance to the licensee of the hospital or nursing home and in the case of a voluntary patient who is a minor such cost shall be paid by his guardian.

Voluntary
patient
to abide
by regu-
lations of
mental
hospitals
or
mental
nursing
homes.

17. Every voluntary patient shall be bound to abide by any regulations that may be made by the licensee of the mental hospital or mental nursing home wherein he is an inpatient.

Leave of
absence
or dis-
charge of
voluntary
patients.

18. (1) The medical officer in charge of a mental hospital or mental nursing home shall, on an application made in that behalf by any voluntary patient, and, in the case of a minor voluntary patient, by the guardian of the patient, grant, subject to the provisions contained in section 19, within twenty four hours of the receipt of such application, leave of absence to the patient for a period not exceeding thirty days at a time and not exceeding ninety days in the aggregate or discharge the patient from the mental hospital or mental nursing home.

(2) Where a minor voluntary patient, who is admitted as an inpatient in any mental hospital or mental nursing home, attains majority, the medical officer in charge shall, as soon as may be, intimate the patient that he has attained majority and that, unless an application for his continuance as an inpatient is made by him within one month of such intimation, he shall subject to the provisions contained in section 19, be discharged, and if before the expiry of the said period, no application is made to the medical officer in charge for his continuance as an inpatient, he shall, on the expiry of the said period, be discharged.

PART II

Temporary treatment orders

Tempo-
rary
treatment
orders.

19. (1) Any relative or friend of a mentally ill person may make an application to the Magistrate within the local limits of whose jurisdiction such mentally ill person ordinarily resides seeking admission of the mentally ill person to any mental hospital or mental nursing home for treatment for a temporary period.

(2) Every application under sub-section (1) shall be in the prescribed form and supported by a certificate from a medical officer or a psychiatrist.

(3) Where, before granting leave of absence or discharging a voluntary patient under section 18, the medical officer in charge of any mental hospital or mental nursing home is of opinion that the voluntary patient is likely to act in a manner which will be injurious to his health or will endanger his own life or the life of others, the medical officer may make an application to the Magistrate within the local limits of whose jurisdiction the mental hospital or the mental nursing home is situated, that the patient be detained in the mental hospital or, as the case may be, mental nursing home for further treatment.

(4) Where the medical officer in charge of any mental hospital or mental nursing home is of opinion that any mentally ill person undergoing treatment as an outpatient in that hospital or nursing home is likely to act in a manner which will be injurious to his health or will endanger his own life or the life of others, the medical officer in charge may make an application to the Magistrate within the local limits of whose jurisdiction the mental hospital or the mental nursing home is situated, that the patient be detained in any mental hospital, or mental nursing home for treatment as an inpatient.

(5) On receipt of an application under sub-section (1) or sub-section (3) or sub-section (4), the Magistrate may, after making such inquiries as he may deem fit, if satisfied that in the interests of health and personal safety of the mentally ill person or for the protection of others, he should be detained as an inpatient in a mental hospital or mental nursing home, pass a temporary treatment order for the detention for treatment of such person in such mental hospital or mental nursing home and for such period not exceeding six months from the date of the order as may be specified in the order.

20. (1) Every mentally ill person detained for treatment in any mental hospital or mental nursing home under a temporary treatment order shall, on the expiration of the period of detention specified in the order, be discharged from such hospital or, as the case may be, nursing home:

Provided that where the period of detention specified in the temporary treatment order is less than six months and the medical officer in charge of the mental hospital or mental nursing home is of opinion that the treatment of such person as an inpatient should be continued beyond the period specified in that order, he may, before the expiry of the said period, make an application for the extension of the period to the Magistrate within the local limits of whose jurisdiction the mental hospital or, as the case may be, mental nursing home is situated.

Discharge
of
persons
detained
in
mental
hospitals
or
mental
nursing
home
under
tempo-
rary
treatment
orders.

(2) On receipt of an application under sub-section (1), the Magistrate shall deal with it in a manner specified in sub-section (5) of section 19; so, however, that the period of further detention together with the period specified in the temporary treatment order made under the said sub-section (5) under which he is detained in the mental hospital or, as the case may be, mental nursing home, shall not exceed, in the aggregate, six months.

PART III

*Reception orders**Part 'A'**Reception orders on applications*

Applica-
tion for
reception
order.

21. (1) An application for a reception order may be made by—

(a) the medical officer in charge of a mental hospital or mental nursing home,

(b) the husband, wife or relative of the mentally ill person.

(2) Where a medical officer in charge of a mental hospital or mental nursing home, in which a mentally ill person is undergoing treatment under a temporary treatment order, is satisfied that—

(a) the mentally ill person is suffering from mental disorder of such a nature and degree that his treatment in the mental hospital or as the case may be, mental nursing home is required to be continued for more than six months, or

(b) it is necessary in the interests of health and personal safety of the mentally ill person or for the protection of others that such person shall be detained in a mental hospital or nursing home, or

(c) a temporary treatment order shall not be adequate in the circumstances of the case,

he may make an application to the Magistrate within the local limits of whose jurisdiction the mental hospital or, as the case may be, mental nursing home is situated, for the detention of such mentally ill person under a reception order in such mental hospital or nursing home, as the case may be.

(3) Subject to the provisions of sub-section (5), the husband or wife of a person who is alleged to be mentally ill or, where there is no husband or wife, or where the husband or wife is prevented by reason of any illness or absence from India or otherwise from making the application, any other relative of such person may make an application to the Magistrate within the local limits of whose jurisdiction the said person ordinarily resides, for the detention of the alleged mentally ill person under a reception order in a mental hospital or mental nursing home.

(4) Where the husband or wife of the alleged mentally ill person is not the applicant, the application shall contain the reasons for the application not being made by the husband or wife and shall indicate the relationship of the applicant with the alleged mentally ill person and the circumstances under which the application is being made.

(5) No person—

(i) who is a minor, or

(ii) who, within fourteen days before the date of the application, has not seen the alleged mentally ill person, shall make an applica-

tion under this section.

(6) Every application under sub-section (3) shall be made in the prescribed form and shall be signed and verified in the prescribed manner and shall state whether any previous application has been made for inquiry into the mental condition of the alleged mentally ill person, and shall be accompanied by—

(a) (i) medical certificates from two medical practitioners, one of whom shall be a medical officer authorised by the State Government in that behalf, or (ii) a medical certificate from a psychiatrist; and

(b) a certified copy of the order in a case where there has been an order by the Magistrate or the Court on any previous application for the detention of such mentally ill person in a mental hospital or mental nursing home under a reception or T. T. order

22. Every medical certificate, referred to in sub-section (6) of section 21, shall be in the prescribed form and shall contain a statement—

Form and contents of medical certificates.

(a) that the medical practitioner or the psychiatrist has personally examined the alleged mentally ill person,

(b) that in the opinion of the medical practitioner or, as the case may be, the psychiatrist, the alleged mentally ill person is suffering from mental disorder of such a nature and degree as to warrant the detention of such person in a mental hospital or mental nursing home and that such detention is necessary in the interest of health and personal safety of that person or for the protection of others; and

(c) that he has formed his opinion on the basis of his observations and the observations of any other medical practitioner and from the particulars communicated to him by other persons.

23. (1) On receipt of an application under sub-section (2) of section 21, the Magistrate may make a reception order, if he is satisfied that—

Procedure upon application for reception order.

(i) the mentally ill person is suffering from mental disorder of such a nature and degree that it is necessary to detain him in a mental hospital or mental nursing home for treatment; or

(ii) it is necessary in the interests of health and personal safety of the mentally ill person or for the protection of others that he should be so detained,

and that a temporary treatment order shall not be adequate in the circumstances of the case and that it is necessary to make a reception order.

(2) On receipt of an application under sub-section (3) of section 21, the Magistrate shall consider the allegations made in the application and the evidence of mental illness as disclosed by the medical certificates.

(3) If the Magistrate considers that there are grounds for proceeding further, he shall personally examine the alleged mentally ill person unless, for reasons to be recorded in writing, he thinks that it is unnecessary or inexpedient to do so.

(4) If the Magistrate is satisfied that a reception order may properly be made forthwith, he may make such order, and if the Magistrate is not so satisfied, he shall fix a date for further consideration of the application and may make such inquiries concerning the alleged mentally ill person as he thinks fit.

(5) The notice of the date fixed under sub-section (4) shall be given to the applicant and to any other person to whom in the opinion of the Magistrate, such notice shall be given.

(6) If the Magistrate fixes a date under sub-section (4) for further consideration of the application, he may make such order as he thinks fit for the proper care and custody of the alleged mentally ill person pending disposal of the application.

(7) On the date fixed under sub-section (4) or on any further date as may be fixed by the Magistrate, he shall proceed to consider the application in camera, in the presence of—

- (i) the applicant;
- (ii) the alleged mentally ill person (unless the Magistrate in his discretion otherwise directs);
- (iii) any person who may be appointed by the alleged mentally ill person to represent him; and
- (iv) such other person as the Magistrate thinks fit

and if the Magistrate is satisfied that the alleged mentally ill person, in relation to whom the application is made, is so mentally ill that in the interests of health and personal safety of that person or for the protection of others it is necessary to detain him in a mental hospital or mental nursing home for treatment, he may pass a reception order or T.T. Order for that purpose and if he is not so satisfied, he shall dismiss the application and every such order may provide for the payment of the costs of the inquiry by the applicant personally or from out of the estate of the mentally ill person, as the Magistrate may deem appropriate.

(8) If the application is dismissed under sub-section (7), the Magistrate shall record the reasons for such dismissal and a copy of the order shall be furnished to the applicant.

Part 'B'

Reception orders on production of mentally ill persons before Magistrate

Powers
and
duties
of
police
officers
in res-
pect of
certain
mentally
ill
persons.

24. (1) Every officer in charge of a police station—

(a) may arrest or cause to be arrested any person found wandering at large within the limits of his station whom he has reason to believe to be so mentally ill as to be incapable of taking care of himself; and

(b) shall arrest or cause to be arrested any person within the limits of his station whom he has reason to believe to be dangerous by reason of mental illness.

(2) No person arrested under sub-section (1) shall be detained in police custody without being informed as soon as may be of the grounds

for such arrest, or where, in the opinion of the arresting officer, such person is not capable of understanding those grounds, without his relatives or friends, if any, being informed of such grounds.

(3) Every person, who is arrested and detained in custody under this section, shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and shall not be detained in custody beyond the said period without the authority of the Magistrate

25. (1) If a person is produced before him under sub-section (3) of section 24, and if, in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall—

Procedure
on pro-
duction of
mentally
ill
person.

(a) examine the person to assess his capacity to understand,

(b) cause him to be examined by a medical officer, and

(c) make such inquiries in relation to such person as he may deem necessary.

(2) After the completion of the proceedings under sub-section (1), the Magistrate may pass a reception order or T.T Order authorising the detention of the said person as an inpatient in a mental hospital or mental nursing home—

(a) if the medical officer certifies such person to be a mentally ill person, and

(b) if the Magistrate is satisfied that the said person is a mentally ill person and in the interests of health and personal safety of that person or for the protection of others, it is necessary to pass such orders:

Provided that, if any friend or relative of the mentally ill person desires that the mentally ill person be sent to any particular licensed mental hospital or licensed mental nursing home for treatment therein and undertakes in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the mentally ill person in such hospital or nursing home, the Magistrate shall, if the medical officer in charge of such hospital or nursing home consents, make a reception order for the admission of the mentally ill person into that hospital or nursing home and detention therein.

Provided further that if any friend or relative of the mentally ill person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally ill person will be properly taken care of and shall be prevented from doing any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to the care of such friend or relative

Order in
case of
mentally
ill
person
cruelly
treated
or not
under
proper
care and
control.

26. (1) Every officer in charge of a police station, who has reason to believe that any person within the limits of his station is mentally ill and is not under proper care and control, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.

(2) If it appears to the Magistrate on the report of a police officer or on information derived from any other person, or otherwise, that any mentally ill person within the local limits of his jurisdiction is not under proper care and control, or is ill-treated or neglected by any relative or other person having the charge of such mentally ill person, the Magistrate may cause the mentally ill person to be produced before him, and summon such relative or other person who is, or who ought to be in charge of, such mentally ill person.

(3) If such relative or any other person is legally bound to maintain the mentally ill person, the Magistrate may, by order, require the relative or the other person to take proper care of such mentally ill person and where such relative or other person willfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month.

(4) If there is no person legally to maintain the mentally ill person, or if the person legally bound to maintain the mentally ill person refuses or neglects to maintain such person, or if, for any other reason, the Magistrate thinks fit so to do, he may cause the mentally ill person to be produced before him and, without prejudice to any action that may be taken under sub-section (3), proceed in the manner provided in section 25 as if such person has been produced before him under sub-section (3) of section 24

PART 'C'

Reception orders in emergencies

Applica-
tion for
admission
of
mentally
ill
persons
in emer-
gency.

27. (1) Where any medical officer or medical practitioner or any friend or relative of a mentally ill person is of opinion that unless such mentally ill person is immediately admitted to any mental hospital or mental nursing home for treatment, the health and personal safety of such person or of others will be in imminent danger, he may make an application to the medical officer in charge of any mental hospital or mental nursing home for admission forthwith of such mentally ill person to the mental hospital or, as the case may be, mental nursing home under his charge.

(2) Every application under sub-section (1) shall be in the prescribed form containing a statement that unless the mentally ill person is forthwith admitted to any mental hospital or mental nursing home, there is imminent danger to the health and personal safety of such person or of others, and shall be supported by a certificate to that effect in the prescribed form from a mental practitioner and, wherever possible, from a medical practitioner who is acquainted with the condition of the mentally ill person.

(3) On receipt of an application under sub-section (1), the medical officer in charge shall admit the mentally ill person to the mental hospital or the mental nursing home under his charge and forthwith report the

fact of admission to the Magistrate within the local limits of whose jurisdiction such hospital or nursing home is situated.

(4) No mentally ill person admitted to any mental hospital or mental nursing home under sub-section (3) shall be detained therein for more than seventy-two hours from the time of his admission.

Provided that where the medical officer in charge of the mental hospital or mental nursing home in which such person is detained considers that it is necessary, in the interests of the health and personal safety of such person or of others, to detain such person in the mental hospital or, as the case may be, mental nursing home for a longer period, he may make an application to the Magistrate referred to in sub-section (3) for permitting him to detain the mentally ill person in the mental hospital or, as the case may be, mental nursing home, for such longer period, not exceeding ten days, from the time of admission of such person, as may be mentioned in the application

(5) On receipt of an application from the medical officer in charge under the proviso to sub-section (4), the Magistrate may, if satisfied on the basis of the medical certificate filed in support of the application made under sub-section (1), the statement of the medical officer in charge, and on the basis of such other inquiry as may be made by him, about the necessity of passing an order for the detention for the period applied for, pass a reception order to that effect.

Part 'D'

Further provisions regarding admission and detention of certain mentally ill persons

28. Any District Court holding an inquisition under Chapter V regarding any person who is found to be mentally ill and in the opinion of the District Court it is necessary so to do in the interests of the person may, by order, direct that such person be admitted and kept as an inpatient in a mental hospital or mental nursing home and every such order may be varied from time to time or revoked by the District Court.

Admission
as in-
patient
after
inquisi-
tion.

3 of 1900.
45 of
1950.
46 of
1950.
62 of
1957.
2 of 1974

29. An order under section 30 of the Prisoners Act, 1900 or section 144 of the Air Force Act, 1950, or under section 145 of the Army Act, 1950, or under section 143 or section 144 of the Navy Act, 1957, or under section 330 or section 335 of the Code of Criminal Procedure, 1973, directing the reception of a mentally ill criminal into any mental hospital or mental nursing home, shall be sufficient authority for admission of such criminal in such hospital or, as the case may be, mental nursing home or any other mental hospital or mental nursing home to which such criminal may be lawfully transferred for detention therein

Admission
and deten-
tion of
mentally
criminals.

30 (1) When any person alleged to be a mentally ill person appears or is brought before a Magistrate under the provisions of section 24 or section 26, the Magistrate may, by order in writing, authorise the detention of the alleged mentally ill person in suitable custody for such time not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to determine whether a medical certificate in respect of that alleged mentally ill person may properly be given under clause (a) of sub-section (2) of section 25.

Deten-
tion of
alleged
mentally
ill
person
pending
report by
medical
officer.

(2) The Magistrate may from time to time, for the purpose mentioned in sub-section (1), by order in writing, authorise such further detention of the alleged mentally ill person for periods not exceeding ten days at a time as he may deem necessary:

Provided that no person shall be authorised to be detained under this section for a continuous period exceeding thirty days in the aggregate.

Detention
of men-
tally ill
person
pending
his remo-
val to
mental
hospital
or
mental
nursing
home.

31 Whenever any reception order is made by a Magistrate under section 23, section 25 or section 26, he may, for reasons to be recorded in writing, direct that the mentally ill person in respect of whom the order is made may be detained in such place as he may deem appropriate, pending the removal of such person to a mental hospital or mental nursing home.

PART 'E'

Miscellaneous Provision in relation to Orders under this Chapter

Time and
manner of
medical
examina-
tion of
mentally
ill
persons.

32 Where any order under this Chapter is required to be made on the basis of a medical certificate, such order shall not be made unless the person who has signed the medical certificate, or where two such certificates are required, the signatory of the respective certificates has or have certified that he has or they have, as the case may be, personally examined the alleged mentally ill person—

(i) in the case of an order upon application, not earlier than ten clear days immediately before the date on which such application is made; and

(ii) in any other case, not earlier than ten clear days immediately before the date of the order:

Provided that where two medical certificates are required, a reception order shall not be made unless the certificates show that each signatory of the certificate had examined the alleged mentally ill person in the absence of the other signatory of the certificate.

Authority
for
reception
order
or for
temporary
treatment
order.

33. A temporary treatment order or a reception order passed under this Chapter shall be sufficient authority—

(i) for the applicant or any person authorised by him, or

(ii) in the case of a reception order not made upon an application, for the person authorised so to do by the authority making the order,

to take the mentally ill person to the place mentioned in such order or for his admission and treatment as an inpatient in the mental hospital or mental nursing home specified in the order, or, as the case may be, for his admission and detention therein, or in any mental hospital or mental nursing home to which he may be removed in accordance with the provisions of this Act, and the medical officer in charge shall be bound to comply with the order:

Provided that in any case where the medical officer in charge finds accommodation in the mental hospital or mental nursing home inadequate, he shall, after according admission, intimate that fact to the Magistrate or the Court which passed the order and thereupon the Magistrate or the Court, as the case may be, shall pass such order as he or it may deem fit :

Provided further that every temporary treatment order or reception order shall cease to have effect—

(a) on the expiration of thirty days from the date on which it was made, unless within that period, the mentally ill person has been admitted to the place mentioned therein, and

(b) on the discharge in accordance with the provisions of this Act, of the mentally ill person.

34. Every Magistrate or Court making a temporary treatment order or reception order shall forthwith send a certified copy thereof together with copies of the requisite medical certificates and the statement of particulars to the medical officer in charge of the mental hospital or mental nursing home to which the mentally ill person is to be admitted.

Copy of temporary treatment order or reception order to be sent to medical officer in charge

35. No Magistrate or Court shall pass a temporary treatment order or a reception order for the admission as an inpatient into, or for the detention of any mentally ill person in, any mental hospital or mental nursing home outside the State in which the Magistrate or the Court exercises jurisdiction.

Restriction as to mental hospitals and mental nursing homes into which temporary treatment order or reception order may direct admission.

Provided that an order for admission or detention in a mental hospital or a mental nursing home outside the State may be passed if the State Government has, by general or special order and after obtaining the consent of the Government of the State in which the mental hospital or mental nursing home is situated, authorised the Magistrate or the Court in that behalf.

36. If, after the admission of any mentally ill person to any mental hospital or mental nursing home under a temporary treatment order or a reception order, it appears that the order under which he was admitted or detained or any of the documents on the basis of which such order was made is defective or incorrect, the same may, at any time thereafter, be amended with the permission of the Magistrate or the Court, as the case may be, by the person or persons who signed the same and upon such amendment being made, the order shall have effect and shall be deemed always to have had effect as if it had been originally made as so amended, or, as the case may be, the medical certificate or medical certificates upon which it was made had been originally furnished as so amended.

Amendment of Order or documents

Power
to appoint
substitute
for
person
upon
whose
applica-
tion
reception
order
has been
made.

37. (1) The Magistrate may, by order in writing (hereinafter referred to as "an order of substitution"), transfer the duties and responsibilities under this Act, of the person on whose application a reception order was made, to any other person who is willing to undertake the same and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose application the reception order was made and all references in this Act to the latter person shall be construed accordingly:

Provided that no such order of substitution shall absolve the person upon whose application the reception order was made or, if he is dead, his legal representatives, from any liability incurred before the date of the order of substitution.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose application the reception order was made, if he is alive, and to any relative of the mentally ill person who, in the opinion of the Magistrate, shall have notice.

(3) The notice under sub-section (2) shall specify the name of the person in whose favour it is proposed to make the order of substitution and the date (which shall be not less than twenty days from the issue of the notice) on which objections, if any, to the making of such order shall be considered.

(4) On the date specified under sub-section (3), or on any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom when notice was sent, or by any other relative of the mentally ill person, and shall receive all such evidence as may be produced by or on behalf of any such persons and after making such inquiry as the Magistrate may deem fit, make or refrain from making an order of substitution :

Provided that, if the person on whose application the reception order was made is dead and any other person is willing and is, in the opinion of the Magistrate, fit to undertake the duties and responsibilities under this Act of the former person, the Magistrate shall, subject to the provisions contained in the proviso to sub-section (1), make an order to that effect.

(5) In making any substitution order under this section, the Magistrate shall give preference to the person who is the nearest relative of the mentally ill person, unless, for reasons to be recorded in writing, the Magistrate considers that giving such preference will not be in the interests of the mentally ill person

(6) The Magistrate may make, such order for the payment of the costs of an inquiry under this section by any person or from out of the estate of the mentally ill person as he thinks fit.

(7) Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended.

38. In areas where a Commissioner of Police has been appointed, all the powers and functions of the Magistrate under sections 24, 25, 26, 27 and 30 may be exercised or discharged by the Commissioner of Police and all the functions of an officer in charge of a police station under this Act may be discharged by any police officer not below the rank of an Inspector

Officers competent to exercise powers and discharge functions of Magistrate under certain sections.

CHAPTER IV

INSPECTION, DISCHARGE, LEAVE OF ABSENCE AND REMOVAL OF MENTALLY ILL PERSONS

PART I

Inspection

39. (1) The State Government shall appoint for every mental hospital and mental nursing home in the State, not less than five visitors, one of whom at least shall be a medical officer, for such period as it may think fit.

Appointment of Visitors.

(2) The Inspector-General of Prisons and the head of the Medical Services of the State shall be *ex officio* Visitors of all the mental hospitals and mental nursing homes in the State.

(3) The qualifications for Visitors to be appointed under sub-section (1) and the terms and conditions of their appointment shall be such as may be prescribed.

40. Three or more of the Visitors shall, once at least in every month, make a joint inspection of every part of the mental hospital or mental nursing home in respect of which they are Visitors and examine, as far as circumstances will permit, every mentally ill person admitted therein and the order for the admission of, and the medical certificates relating to, every mentally ill person admitted subsequent to the joint inspection immediately preceding, and shall enter in a book kept for that purpose such remarks as they deem appropriate in regard to the management and condition of the hospital or nursing home and of the inpatients thereof:

Monthly inspection by visitors.

Provided that the Visitors shall not be entitled to inspect any personal records of an inpatient which, in the opinion of the medical officer in charge, are confidential in nature.

41. (1) Notwithstanding anything contained in section 40, where any person is detained under the provisions of section 144 of the Air Force Act, 1950 or section 145 of the Army Act, 1950, or section 143 or section 144 of the Navy Act, 1957, or section 330 or section 335 of the Code of Criminal Procedure, 1973,—

Inspection of mentally ill criminals.

(i) the Inspector-General of Prisons, in the case of the person detained in a jail; or

(ii) the Inspector-General of Prisons and all or any three of the Visitors appointed under sub-section (1) of section 39, in the case

45 of
1950.
46 of
1950.
62 of
1957.
2 of
1974.

shall, once in every six months, visit such person at the place where he is detained, in order to assess the state of mind of such person and make a report about it to the authority under whose order such person is so detained.

(2) The State Government may empower any of its officers to discharge all or any of the functions of the Inspector-General of Prisons under sub-section (1).

(3) The medical officer in charge of a mental hospital or mental nursing home wherein any person referred to in sub-section (1) is detained, shall, once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

(4) Every person referred to in sub-section (1) who is detained in jail, shall be visited at least once in every six months by a medical officer empowered by the State Government in this behalf and such medical officer shall make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

PART II *Discharge*

Order of
discharge
by Visi-
tors.

42. (1) Notwithstanding anything contained in Chapter III, any three of the Visitors of a mental hospital or mental nursing home may, on the recommendation of the medical officer in charge, by order in writing, direct the discharge of any person other than a voluntary patient detained therein or undergoing treatment therein as an inpatient and such person shall thereupon be discharged from the mental hospital or mental nursing home:

Provided that no order under this sub-section shall be made in respect of a mentally ill criminal otherwise than as provided in section 30 of the Prisoners Act, 1900 and in any other law applicable to him.

3 of 1900.

(2) Where any order of discharge is made under sub-section (1) in respect of a person who has been detained or is undergoing treatment as inpatient in pursuance of an order of any authority, a copy of such order shall be immediately forwarded to that authority by the medical officer in charge.

Discharge
of men-
tally ill
person on
applica-
tion.

43. Any person detained in a mental hospital or mental nursing home under a reception order made in pursuance of an application shall be discharged on an application made in that behalf to the medical officer in charge by the person on whose application the reception order was made:

Provided that no person shall be discharged under this section if the medical officer in charge certifies in writing that the person is dangerous and unfit to be at large.

Order of
discharge
on the
undertak-
ing of
relatives
or friends,
etc., for
due care
of men-
tally ill
person.

44. (1) Where any relative or friend of a mentally ill person detained in a mental hospital or mental nursing home under section 23, 25, 26 or 27 desires that such person shall be delivered over to his care and custody, he may make an application to the medical officer in charge who shall forward it together with his remarks thereon to the authority under whose orders the mentally ill person is detained.

(2) Where an application is received under section (1), the authority shall, on such relative or friend furnishing a bond with or without sureties, for such amount as such authority may specify in this behalf, undertaking to take proper care of such mentally ill person, and ensuring that the mentally ill person shall be prevented from causing injury to himself or to others, make an order of discharge and thereupon the mentally ill person shall be discharged.

45. If any person detained in a mental hospital or mental nursing home in pursuance of a reception order made under this Act is subsequently found, on an inquisition held in accordance with the provisions of Chapter V, to be of sound mind or capable of taking care of himself and managing his affairs, the medical officer in charge shall forthwith on the production of a copy of such finding, duly certified by the District Court, discharge such person from the hospital or nursing home

PART III

Leave of absence

46. (1) An application for leave of absence on behalf of any mentally ill person (not being a mentally ill criminal) undergoing treatment as an inpatient in any mental hospital or mental nursing home may be made to the medical officer in charge,—

Leave of
absence.

(a) in the case of a person who was admitted on the application of the husband or wife or any other relative, by the husband or wife of such mentally ill person or, where by reason of mental or physical illness, absence from India or otherwise, the husband or wife is not in a position to make such application, by any other relative of the mentally ill person duly authorised by the husband or wife or such other relative, and

(b) in the case of any other person, by the guardian of the mentally ill person:

Provided that no application under this sub-section shall be made by a person who has not attained the age of majority.

(2) Every application under sub-section (1) shall be accompanied by a bond, with or without sureties for such amount as the medical officer in charge may specify, undertaking,—

(i) to take proper care of the mentally ill person,

(ii) to prevent the mentally ill person from causing injury to himself or to others, and

(iii) to bring back the mentally ill person to the mental hospital or, as the case may be, mental nursing home, on the expiration of the period of leave.

(3) On receipt of an application under sub-section (1), the medical officer in charge may grant leave of absence to the mentally ill person for such period (not exceeding thirty days at a time and not exceeding ninety days in the aggregate) and subject to such conditions as may, in the interests of health and personal safety of the mentally ill person or for the protection of others, be specified in the order.

(4) Where the mentally ill person is not brought back to the mental hospital or mental nursing home on the expiration of the leave granted to him under this section, the medical officer in charge shall forthwith report that fact to the Magistrate within the local limits of whose jurisdiction such hospital or nursing home is situate and the Magistrate may, after making such inquiry as he may deem fit, pass an order directing him to be brought back to the mental hospital or mental nursing home, as the case may be.

(5) Nothing contained in this section shall apply to a voluntary patient who shall be granted leave in accordance with the provisions contained in section 18.

Grant
of
Leave
of
absence
by Magis-
trate.

47. (1) Where the medical officer in charge refuses to grant leave of absence to a mentally ill person under section 46, the applicant may apply to the Magistrate within the local limits of whose jurisdiction the mental hospital or the mental nursing home wherein the mentally ill person is detained is situate, for the grant of leave of absence to the mentally ill person and the Magistrate may, if he is satisfied that it is necessary so to do, and on the applicant entering into a bond in accordance with the provisions of sub-section (2), by order, grant leave of absence to the mentally ill person for such period and subject to such conditions as may be specified in the order.

(2) Every bond referred to in sub-section (1) shall be with or without sureties and for such amount as the Megistrate may decide and shall contain the undertakings referred to in sub-section (2) of section 46.

(3) The Magistrate shall forward a copy of his order to the medical officer in charge and on receipt of such order, the medical officer in charge shall entrust the mentally ill person to the person on whose application the leave of absence was granted under this section.

PART IV

Removal

Removal
of men-
tally ill
person
from
one
hospital
to
another.

48. (1) Any mentally ill person, other than a voluntary patient, may, subject to any general or special order of the State Government, be removed from any mental hospital or mental nursing home to any other mental hospital or mental nursing home within the State, or to any other mental hospital or mental nursing home in any other State with the consent of the Government of that other State:

Provided that no mentally ill person admitted to a mental hospital or mental nursing home on an order made in pursuance of an application made under this Act shall be so removed unless intimation thereof has been given to the applicant.

(2) The State Government may make such general or special order as it thinks fit directing the removal of any mentally ill criminal from the place where he is for the time being detained, to any mental hospital, mental nursing home, jail or other place of safe custody in the State or to any mental hospital, mental nursing home, jail or other place of safe custody in any other State with the consent of the Government of that other State.

49. Every person brought into a mental hospital or mental nursing home under any order made under this Act, may be detained or, as the case may be, admitted as an inpatient therein until he is removed or discharged as authorised by law, and in case of escape may by virtue of such order, be re-taken by any police officer or by the medical officer in charge or any officer or servant of such hospital or nursing home, or by any other person authorised in that behalf by the medical officer in charge, and conveyed to, and received and detained or, as the case may be, kept as an inpatient in such hospital or nursing home:

Admission
detention
and re-
taking in
certain
cases.

Provided that in the case of a mentally ill person (not being a mentally ill criminal) the power to re-take as aforesaid under this section shall not be exercisable after the expiry of period of one month from the date of his escape.

CHAPTER V

JUDICIAL, INQUISITION REGARDING ALLEGED MENTALLY ILL PERSON POSSESSING PROPERTY, CUSTODY OF HIS PERSON AND MANAGEMENT OF HIS PROPERTY

50. (1) Where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either,—

Applica-
tion for
judicial
inquisi-
tion.

(a) by any of his relatives, or

(b) by a public curator appointed under the Indian Succession Act, 1925, or

89 of
1925.

(c) by the Advocate-General of the State in which the alleged mentally ill person resides, or

(d) where the property of the alleged mentally ill person comprises land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any State Law for the time being in force in the State, by the Collector of the District in which such land is situate, to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides.

(2) On receipt of an application under sub-section (1), the District Court shall, by personal service or by such other mode of service as it may deem fit, serve a notice on the alleged mentally ill person to attend at such place and at such time as may be specified in the notice or shall, in like manner, serve a notice on the person having the custody of the alleged mentally ill person to produce such person at the said place and at the said time, for being examined by the District Court or by any other person from whom the District Court or by any other person from whom the District Court may call for a report concerning the mentally ill person:

Provided that, if the alleged mentally ill person is a woman, who, according to the custom prevailing in the area where she resides or according to the religion to which she belongs, ought not to be compelled to appear in public, the District Court may cause her to be examined by issuing a commission as provided in the Code of Civil Procedure, 1908.

(3) A copy of the notice under sub-section (2) shall also be served upon the applicant and upon any relative of the alleged mentally ill person or other person who, in the opinion of the District Court, shall have notice of judicial inquisition to be held by it.

(4) For the purpose of holding the inquisition applied for, the District Court may appoint two or more persons to act as assessors.

51. On completion of the inquisition, the District Court shall record its findings on,—

(i) where the alleged mentally ill person is in fact mentally ill or not, and

(ii) where such person is mentally ill, whether he is incapable of taking care of himself and of managing his property, or incapable of managing his property only.

Issues which finding should be given by District Court after inquisition.

Provision for appointing guardian of mentally ill person and for manager of property.

52. (1) Where the District Court records a finding that the alleged mentally ill person is mentally ill and is incapable of taking care of himself and of managing his property, it shall pass an order for the appointment of a guardian under section 53 to take care of his person and of a manager under section 54 for the management of his property.

(2) Where the District Court records a finding that the alleged mentally ill person is mentally ill but incapable of managing his property only, it shall pass an order under section 54 regarding the management of his property.

(3) Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application.

(4) Where the District Court deems fit, it may appoint under sub-section (1) the same person to be the guardian and manager.

Appointment of guardian of mentally ill person.

53. (1) Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under sub-section (2) of section 54, the Collector of the District, may appoint any suitable person to be his guardian:

Provided that, no person, who is the legal heir of the mentally ill person, shall be appointed to be the guardian unless the District Court or, as the case may be the Collector, for reasons to be recorded in writing, considers that such an appointment is for the benefit of the mentally ill person.

(2) In the discharge of his functions under sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf.

Appointment of manager for management of property of mentally ill person.

54. (1) Where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law relating thereto for the time being in force, the District Court shall authorise the Court of Wards to take charge of such property, and thereupon, notwithstanding anything contained in the aforesaid law, the Court of Wards shall assume management of the property in accordance with that law.

(2) Where the property of the mentally ill person consists in whole or in part of land or of any interest in land which cannot be taken charge of by the Court of Wards, the District Court may, after obtaining the consent of the Collector of the District in which the land is situate, direct the collector to take charge of such part of the property of the mentally ill person as cannot be taken charge of by the Court of Wards.

(3) Where the management of the property of the mentally ill person cannot be entrusted to the Court of Wards or to the Collector under sub-section (1) or sub-section (2), the District Court shall appoint any suitable person to be the manager of such property

55. Where the property of a mentally ill person has been entrusted to him by the District Court under sub-section (2) of section 54, the Collector may, subject to the control of the State Government or of any authority appointed by it in that behalf, appoint any suitable person for the management of the property of the mentally ill person

Appoint-
ment of
manager
by
Collector.

56. Every person who is appointed as the manager of the property of a mentally ill person by the District Court or by the Collector shall, if so required by the appointing authority, enter into a bond for such sum, in such form and with such sureties as that authority may specify, to account for all receipts from the property of the mentally ill person

Manager
of pro-
perty to
execute
bond.

57. The guardian of a mentally ill person and the manager of his property, appointed under this Act, shall be paid, from out of the property of the mentally ill person, such allowance as the appointing authority may determine.

Remune-
ration of
managers
and
guardians

58 (1) Every person appointed as guardian of a mentally ill person, or his property, or of both, under this Act shall have the care of the mentally ill person or his property, or of both and be responsible for the maintenance of the mentally ill person and of such members of his family as are dependent on him.

Duties of
guardian

(2) Where the person appointed as guardian of a mentally ill person is different from the person appointed as the manager of his property, the manager of his property shall pay to the guardian of the mentally ill person such allowances as may be fixed by the authority appointing the guardian, for the maintenance of the mentally ill person and of such members of his family as are dependent on him.

59. (1) Every manager appointed under this Act shall, subject to the provisions of this Act, exercise the same powers in regard to the management of the property of the mentally ill person in respect of which he is appointed as manager, as the mentally ill person would have exercised as owner of the property had he not been mentally ill, and shall realise all claims due to the estate of the mentally ill person and pay all debts and discharge all liabilities legally due from that estate:

Powers of
Manager

Provided that, the manager shall not mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property of the mentally ill person or lease it out for a period exceeding five years unless he obtains the permission of the District Court in that behalf.

(2) The District Court may, on application by the manager under the proviso to sub-section (1), grant him permission to mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property of the mentally ill person or to lease out any such property for a period exceeding five years, subject to such conditions or restrictions as that Court may think fit to impose.

(3) The District Court shall cause notice of every application for permission to be served on any relative or friend of the mentally ill person and after considering objections, if any, received from the relative or friend and after making such inquiries as it may deem necessary, grant or refuse permission having regard to the interests of the mentally ill person.

Manager to furnish inventory and annual accounts.

60 (1) Every manager appointed under this Act shall, within six months from the date of his appointment, deliver to the authority, which appointed him, an inventory of the immovable property belonging to the mentally ill person and of all assets and other movable property received on behalf of the mentally ill person, together with a statement of all claims due to, and all debts and liabilities due by, such mentally ill person.

(2) Every manager shall also furnish to the said appointing authority within three months of the close of every financial year, an account of the property and assets in his charge, the sums received and disbursed on account of the mentally ill person and the balance remaining with him.

Manager's power to execute conveyances under order of District Court.

61. The manager appointed under this Act may, in the name and on behalf of the mentally ill person,—

(a) execute all such conveyances and instruments of transfers by way of sale, mortgage or otherwise of property of the mentally ill person as may be permitted by the District Court; and

(b) subject to the orders of the District Court exercise all powers vested in that behalf in the mentally ill person, in his individual capacity or in his capacity as a trustee or as a guardian.

Manager to perform contracts directed by District Court

62. Where the mentally ill person had, before his mental illness, contracted to sell or otherwise dispose of his property or any portion thereof, and if such contract is, in the opinion of the District Court, of such a nature as ought to be performed, the District Court may direct the manager appointed under this Act to perform such contract and to do such other acts in fulfilment of the contract as the Court considers necessary and thereupon the manager shall be bound to act accordingly.

Disposal of business premises.

63. Where a mentally ill person had been engaged in business before he became mentally ill, the District Court may, if it appears to be for the benefit of the mentally ill person to dispose of his business premises, direct the manager appointed under this Act to sell and dispose of such premises and to apply the sale proceeds in such manner as the District Court may direct and thereupon the manager shall be bound to act accordingly.

64. Where a mentally ill person is entitled to a lease or underlease, and it appears to be for the benefit of the mentally ill person to dispose of such lease or underlease, the manager appointed under this Act, may, after obtaining the orders of the District Court, surrender, assign or otherwise dispose of such lease or underlease to such person for such valuable or nominal consideration and upon such terms and conditions as the Court may direct.

Manager
may dis-
pose of
leases.

65. The District Court may, on an application made to it by any person concerning any matter whatsoever connected with the mentally ill person or his property, make such order, subject to the provisions of this Chapter, in relation to that matter as in the circumstances it thinks fit.

Power to
make
order con-
cerning
any mat-
ter con-
nected
with the
mentally
ill per-
son.

66. If any relative of the mentally ill person or the Collector impugns, by a petition to the District Court, the accuracy of the inventory or statement referred to in sub-section (1), or, as the case may be, any annual account referred to in sub-section (2) of section 60, the Court may summon the manager and summarily inquire into the matter and make such order thereon as it thinks fit:

Proceed-
ings if
accuracy
of inven-
tory or
accounts is
impugned.

Provided that the District Court may, in its discretion, refer such petition to any Court subordinate to it, or to the Collector in any case where the manager was appointed by the Collector and the petition is not presented by the Collector.

67. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the mentally ill person or for the management of his property, shall be paid into the public treasury on account of the estate, and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trusts Act, 1882, unless the authority which appointed him, for reasons to be recorded in writing, directs that, in the interests of the mentally ill person such sums be otherwise invested or applied.

Payment
into pub-
lic trea-
sury and
investment
of pro-
ceeds or
estate.

68. Any relative of a mentally ill person may, with the leave of the District Court, sue for an account from any manager appointed under this Act, or from any such person after his removal from office or trust, or from his legal representative in the case of his death, in respect of any property then or formerly under his management or of any sums of money or other property received by him on account of such property.

Relative
may sue
for ac-
counts.

69. (1) The manager of the property of a mentally ill person may, for sufficient cause, be removed by the authority which appointed him and such authority may appoint a new manager in his place.

Removal
of mana-
gers and
guardians.

(2) Any manager removed under sub-section (1) shall be bound to deliver the charge of all property of the mentally ill person to the new manager, and to account for all money received or disbursed by him.

(3) The District Court may, for sufficient cause, remove any guardian of a mentally ill person and appoint in his place a new guardian.

Dissolu-
tion and
disposal of
property
of part-
nership on
a member
becoming
mentally
ill.

70. (1) Where a person, being a member of a partnership firm, is found to be mentally ill, the District Court may, on the application of any other partner for the dissolution of partnership or on the application of any person who appears to that Court to be entitled to seek such dissolution, dissolve the partnership.

(2) Upon the dissolution under sub-section (1), or otherwise, in due course of law, of a partnership firm to which that sub-section applies, the manager appointed under this Act may, in the name and on behalf of the mentally ill person, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the District Court may direct.

Power to
apply
property
for main-
tenance of
mentally
ill person
without
appointing
manager
in certain
cases.

71. (1) Notwithstanding anything contained in the foregoing provisions, if it appears to the District Court, having regard to the situation and condition in life of the mentally ill person and his family and the other circumstances of the case, that it is expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that in the case of cash, the cash and in the case of any other property the produce thereof, shall be realised and paid or delivered to such person as may be appointed by the District Court in this behalf, to be applied for the purpose aforesaid.

(2) A receipt given by the person appointed under sub-section (1) shall be valid discharge to any person who pays money or delivers any property of the mentally ill person to such person.

Power to
order
transfer
of stock
belonging
to men-
tally ill
person in
certain
cases.

72. Where any stock or Government securities or any share in a company (transferrable within India or the dividends of which are payable therein) is or are standing in the name of, or vested in, a mentally ill person beneficially entitled thereto, or in the manager appointed under this Act or in a trustee for him, and the manager dies intestate, or himself becomes mentally ill, or is out of the jurisdiction of the District Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager appointed in his place, within fourteen days after being required by the Court to do so, then the District Court may direct the Company or Government concerned to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as it may direct.

Power to
order
transfer
of stock
mentally
ill person
residing
out of
India.

73. Where any stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of India, the District Court upon being satisfied that such person has been declared to be mentally ill and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may direct the company or Government concerned to make such transfer of the stock, securities or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds, as the District Court thinks fit.

74. If it appears to the District Court that the mental illness of a mentally ill person is in its nature temporary, and that it is expedient to make provision for a temporary period, for his maintenance or for the maintenance of such members of his family as are dependent on him, the District Court may, in like manner as under section 71, direct his property or a sufficient part thereof to be applied for the purpose specified therein.

Power to apply property for mentally ill person's maintenance in case of temporary mental illness.

75. (1) Where the District Court has reason to believe that any person who was found to be mentally ill after inquisition under this Chapter has ceased to be mentally ill, it may direct any court subordinate to it to inquire whether such person has ceased to be mentally ill.

Actions taken in respect of mentally ill person to be set aside if District Court finds that his mental illness has ceased.

(2) An inquiry under sub-section (1) shall, so far as may be, be conducted in the same manner as an inquisition conducted under this Chapter.

(3) If after an inquiry under this section, it is found that the mental illness of a person has ceased, the District Court shall order all actions taken in respect of the mentally ill person under this Act to be set aside on such terms and conditions as that Court thinks fit to impose.

76. An appeal shall lie to the High Court from every order made by a District Court under this Chapter.

Appeals.

77. The District Court may, from time to time, make regulations for the purpose of carrying into effect the provisions of this Chapter.

Power of District Court to make regulations.

CHAPTER VI

LIABILITY TO MEET COST OF MAINTENANCE OF MENTALLY ILL PERSONS DETAINED IN MENTAL HOSPITALS OR MENTAL NURSING HOMES

78. (1) The cost of maintenance of a mentally ill person detained as an inpatient in any mental hospital or mental nursing home shall, unless otherwise provided for by any law for the time being in force, be borne by Government of the State wherein the authority which passed the order in relation to the mentally ill person is situated if—

Cases where cost of maintenance shall be borne by Government.

(a) that authority which passed the order has not taken an undertaking from any person to bear the cost of maintenance of such mentally ill person, and

(b) no provision for bearing the cost of maintenance of such person has been made in the said order.

(2) If any dispute arises as to which Government is liable to bear the cost of maintenance of a mentally ill person under sub-section (1), the dispute shall be decided by the Central Government whose decision thereon shall be final.

Applica-
tion of
property
in posses-
sion of
mentally
ill person
found
wander-
ing.

79. Where an alleged mentally ill person is arrested on being found wandering at large, any cash or other articles found in the possession of such person shall be produced by the arresting authority before the Magistrate before whom such person is produced, and thereupon, the Magistrate shall direct the articles found in the possession of such person to be sold and the sale proceeds and the cash found with such person be applied for the cost of maintenance of such person in any mental hospital or mental nursing home.

Applica-
tion to
District
Court for
payment
of cost of
mainten-
ance out
of estate
of men-
tally ill
person
legally
bound
to main-
tain him.

80. (1) Where any mentally ill person detained in a mental hospital or mental nursing home has an estate or where any person legally bound to maintain such person has the means to maintain such person, the Govern- ment liable to pay the cost of maintenance of such person under section 78 or any local authority liable to bear the cost of maintenance of such mentally ill person under any law for the time being in force, may make an application to the District Court within whose jurisdiction, the estate of the mentally ill person is situate or the person legally bound to main- tain the mentally ill person and having the means therefor resides, for an order authorising it to apply the estate of the mentally ill person to the cost of maintenance or, as the case may be, directing the person legal- ly bound to maintain the mentally ill person and having the means there- for to bear the cost of maintenance of such mentally ill person.

(2) An order passed by the District Court under sub-section (1), shall be enforced in the same manner, shall have the same force and effect and be subject to appeal, as a decree made by such Court in a suit in respect of the Property or person mentioned therein:

Provided that, if the District Court so directs, any sum payable in pursuance of an order passed under sub-section (1) shall be recoverable as an arrear of land revenue.

Persons
legally
bound to
maintain
mentally
ill person
not absol-
ved from
such lia-
bility.

81. Nothing contained in the foregoing provisions shall be deemed to absolve a person legally bound to maintain a mentally ill person from bearing the cost of maintenance of such person in any mental hospital or mental nursing home.

CHAPTER VII

PENALTIES AND PROCEDURE

Penalty
for estab-
lishment
or main-
tenance of
mental
hospital or
mental
nursing
home in
contraven-
tion of
Chapter
II.

82. (1) Any person who establishes or maintains a mental hospital or mental nursing home in contravention of the provisions contained in Chapter II of this Act shall, on conviction, be punishable with imprison- ment which may extend to three months or with fine which may extend to two hundred rupees or with both, and in the case of a second or subse- quent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, after conviction under sub-section (1) continues to maintain a mental hospital or mental nursing home in contravention of the provisions contained in Chapter II of this Act shall, on conviction, be

punishable with fine which may extend to one hundred rupees for every day after the first day during which the contravention is continued.

83 Any person who receives or detains or keeps a mentally ill person in a mental hospital or mental nursing home otherwise than in accordance with the provisions of this Act, shall, on conviction, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Penalty for improper reception or detention of mentally ill person.

84. Any manager appointed under this Act to manage the property of a mentally ill person, who contravenes the provisions of section 60 or sub-section (2) of section 69, shall, on conviction, be punishable with fine which may extend to five hundred rupees and may be detained in a civil prison till he complies with the said provisions.

Penalty for contravention of sections 60 and 69.

85. Any person who contravenes any of the provisions of this Act or of any rule or regulation made thereunder, for the contravention of which no penalty is expressly provided in this Act, shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

General provisions for Punishment of other offences.

86 (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any, director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

Explanation—For the purpose of this section,—

(a) “company” means a body corporation and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

87. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no Court or Magistrate shall take cognizance of any offence punishable under section 82, except with the previous sanction of the licensing authority.

Sanction for prosecution.

CHAPTER VIII

MISCELLANEOUS

Provision
as to
bonds.

Pension,
etc. of
mentally
ill
person
payable
by
Govern-
ment

88. The provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973, shall, as far as may be, apply to bonds taken under this Act.

89. (1) Where any sum is payable in respect of pay, pension, gratuity or any allowance to any person by any Government and the person to whom the sum is payable is certified by a Magistrate under this Act to be mentally ill person, the officer under whose authority such sum would be payable, may pay to the person having charge of the mentally ill person so much of the said sum as he thinks fit having regard to the cost of maintenance of such person and may pay to such members of the family of the mentally ill person as are dependent on him for maintenance, the surplus, if any, or such part thereof as he thinks fit having regard to the cost of maintenance.

(2) Where there is any further surplus amount available out of the funds specified in sub-section (1) after making payments as provided in that sub-section, the Government shall hold the same to be dealt with as follows, namely:—

(a) where the mentally ill person is certified to have ceased to be mentally ill by the District Court within the local limits of whose jurisdiction such person resides or is kept or detained, the whole of the surplus amount shall be paid back to that person;

(b) where the mentally ill person dies before payment, the whole of the surplus amount shall be paid over to those of his heirs who are legally entitled to receive the same;

(c) where the mentally ill person dies during his mental illness without leaving any person legally entitled to succeed to his estate, the whole of the surplus amount shall, with prior permission of the District Court, be utilised for such charitable purposes as may be approved by the District Court.

(3) The Central Government or the State Government, as the case may be, shall be discharged of all liability in respect of any amounts paid in accordance with this section.

Protec-
tion to
persons
acting
under
Act.

Construc-
tion of
refer-
ences
to laws
not in
force in
Jammu
and
Kashmir.

90 No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

91. Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

Power
of
State
Govern-
ment to
make
rules.

92. (1) The State Government may, by notification in the official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing-power, such rules may provide for the following matters, namely:—

(a) the clinical conditions which will bring a person within the ambit of the definition of a mentally ill person;

(b) the class or category of persons for whom separate mental hospitals and mental nursing homes may be established and maintained;

(c) the form in which,—

(i) application shall be made for grant or renewal of a licence;

(ii) a licence shall be granted for the establishment or maintenance of a mental hospital or nursing home;

(iii) an application shall be made by any relative or friend of a mentally ill person for a temporary treatment order;

(iv) an application shall be made for a reception order;

(v) a medical certificate, referred to in sub-section (6) of section 21 shall be granted;

(vi) an application shall be made for the admission of a mentally ill person in an emergency;

(vii) a certificate shall be granted by a medical practitioner for the admission of a mentally ill person in an emergency;

(d) the fee payable on application for grant of licence or for renewal of licence;

(e) the manner in which application for a reception order shall be signed and verified;

(f) the minimum facilities that are required to be provided in a mental hospital or mental nursing home for the treatment and care of mentally ill persons;

(g) the manner in which every order refusing to grant, or revoking, a licence shall be communicated;

(h) the manner in which and the conditions subject to which every licensee shall maintain a mental hospital or mental nursing home;

(i) the manner in which licensees shall maintain records;

(j) the manner and the form in, and the period within, which every appeal against any order refusing to grant or renew a licence or revoking a licence shall be preferred and the fee payable in respect thereof;

(k) the facilities to be provided for the treatment of a mentally ill person whose condition does not warrant his admission as an inpatient or who is not undergoing treatment as an inpatient;

(l) the qualifications for visitors and the terms and conditions on which they may be appointed;

(m) any other matter which is required to be, or may be, prescribed.

(3) Any rule made under this section may provide for punishment for the breach thereof with fine which may extend to five thousand rupees.

Effect of
Act on
other
laws.

93. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force and, to the extent of such inconsistency, that other law shall be deemed to have no effect.

Repeal
and
saving.

94. (1) The Indian Lunacy Act, 1912 is hereby repealed.

4 of 1912.

(2) Notwithstanding such repeal, anything done or any action taken (including any instruction or direction issued, any regulation or rule or order made) under any such law shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions aforesaid, as if they were in force when such thing was done or such action was taken, and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

Power to
remove
difficulty.

95. If any difficulty arises in giving effect in a State to the provisions of this Act in their application to any area, the State Government may, with the approval of the Central Government, by order make such provisions or give such directions not inconsistent with the provisions of this Act as appears to the State Government to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section in relation to any area in a State after the expiration of two years from the date on which this Act comes into force in that area.

STATEMENT OF OBJECTS AND REASONS

The Indian Lunacy Act currently in force was enacted in 1912. At that time no active treatment procedures were available in psychiatry and the mental asylums provided custodial care to the mentally ill-protecting them from society and protecting the society from them. This naturally, was the operative spirit behind the Indian Lunacy Act.

During the past half a century, tremendous advances have occurred in the field of psychiatric treatment, the role of psychiatric hospitals have consequently changed, so too the fate of psychiatric patients.

The Indian Lunacy Act, 1912 has become anachronistic and ill-suited to the active therapeutic (as contrasted with the traditional custodial role of the psychiatric hospital.

The outmoded Act, therefore, needs to be replaced by an Act positively geared to mental health.

Hence this Bill.

NEW DELHI;

The 23rd May, 1977.

SUSHILA NAYAR

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for establishment and maintenance of mental hospitals, clause 13 provides for inspection thereof and clause 78 provides for cost of maintenance of a mentally ill person to be borne by the Government. The Bill, therefore, if enacted, is likely to involve an annual expenditure from the Consolidated Fund of India to the tune of rupees five lacs for inspection and maintenance of standards. A token provision of rupees ten lacs is proposed for expenditure on the proper care of the mentally sick.

A non-recurring expenditure of rupees fifty lacs is proposed as a token for setting up of new institutions for the care of the mentally sick.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 77 of the Bill empowers the District Court to make regulations for the purpose of carrying into effect the provisions of Chapter V, Clause 92 empowers the Government to carry out the purposes of the Act. As the matters in respect to which rules may be made pertain to matters of procedure or detail, the delegation of legislative power is of a normal character.

BILL N^o. 57 OF 1977

*A Bill to provide for the welfare of agricultural workers in India
and to regulate the conditions of their work.*

BE it enacted by Parliament in the Twenty-eighth Year of the Republic
of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
com-
mencement.

1. (1) This Act may be called the Indian Agricultural Workers Act,
1977.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government
may, by notification in the Gazette, appoint, and different dates may be
appointed for different areas and for different provisions of this Act.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “adult” means a person who has completed his eighteenth
year of age;

(b) "adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year of age;

(c) "agricultural dispute" means any dispute or difference between landowners and landowners or between landowners and agricultural workers or between agricultural workers and agricultural workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

Explanation.—Where any landowner discharges, dismisses, retrenches or otherwise terminates the services of, or denies employment to, an individual agricultural worker, any dispute or difference between that agricultural worker and his employer connected with, or arising out of such discharge, dismissal, retrenchment, termination or denial of employment shall be deemed to be an agricultural dispute notwithstanding that no other agricultural worker nor any union of agricultural workers is a party to the dispute;

(d) "agricultural land" means any land used for cultivation, but does not include any plantation as defined in the Plantations Labour Act, 1951;

(e) "Agricultural Tribunal" means, in relation to any area, the agricultural tribunal constituted under this Act for that area;

(f) "agricultural worker" means a person who, in consideration of the wages payable to him by a landowner, works on, or does any other agricultural operation in relation to, the agricultural land of such landowner;

(g) "Board" means the Agricultural Workers' Provident Fund Board constituted under Section 11;

(h) "child" means a person who has not completed his fifteenth year of age;

(i) "Conciliation Officer" means, in relation to any area, the Conciliation Officer appointed under this Act for that area;

(j) "family" means husband, wife and their unmarried minor children or such of them as exist;

(k) "Fund" means the fund established in pursuance of sub-section (1) of section 8;

(l) "Inspector" means an Inspector appointed under sub-section (1) of section 5 or deemed, under sub-section (3) of that section, to be appointed for the purposes of this Act;

(m) "Landowner" means—

(i) in relation to a land personally cultivated, the owner of such land;

(ii) in relation to a land held by a cultivating tenant, such cultivating tenant;

(iii) in any other case, the person in actual possession of the land;

and includes his heirs, assignees and legal representatives;

(n) "prescribed wages" means—

(i) wages at such rate, not being—

(a) less than the minimum rate of wages fixed or revised under the Minimum Wages Act, 1948; or

11 of 1948.

(b) more than fifteen per cent. in excess of such minimum rate of wages,

as may be specified by the Central Government by notification in the Gazette; or

(ii) the agreed rate of wages, whichever is higher.

(o) "prescribed" means prescribed by rules made under this Act;

(p) "Scheme" means the Agricultural Workers' Provident Fund Scheme framed under sub-section (1) of section 8;

(q) "wages" means all remuneration, whether payable in cash or in kind, which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, but does not include—

(i) the value of—

(a) any house accommodation, supply of light, water or medical attendance; or

(b) any other amenity or any service excluded by general or special order of the Government; or

(ii) any contribution paid by the employer under any scheme framed under any law for the time being in force;

(iii) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment.

CHAPTER II

OFFICERS AND AGRICULTURAL TRIBUNAL

3. Appointment of Conciliation Officers.—The Central Government may, by notification in the Gazette, appoint for any area specified therein any officer of the Labour Department not below the rank of Assistant Labour Officer to be a Conciliation Officer for the purpose of performing the functions entrusted to a Conciliation Officer by or under this Act.

4. Constitution of Agricultural Tribunals.—(1) The Central Government may, by notification in the Gazette, constitute for any area specified therein an Agricultural Tribunal for the purpose of performing the functions of the Agricultural Tribunal under this Act.

(2) An Agricultural Tribunal shall consist of a sole member, who shall be an officer not below the rank of Deputy Collector, appointed by the Government.

5. Inspectors.—(1) The Central Government may, by notification in the Gazette, appoint—

(a) such officers, or

(b) such persons as possess the prescribed qualification, as they think fit, to be Inspectors for the purposes of this Act and define the local limits within which they shall exercise their powers.

(2) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, at any time after sunrise and before sunset with such assistants (if any), being persons in the service of the Government or any local or other public authority, as he thinks fit, premises or places where agricultural workers are employed or where he has reasons to believe that records are kept, for the purpose of examining any register or record of wages required to be kept under this Act or the rules made thereunder and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and whom he has reasonable cause to believe to be an agricultural worker;

(c) seize or take copies of such register or record or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by a landowner; and

(d) exercise such other powers as may be prescribed.

11 of 1948

(3) Until Inspectors are appointed under this Act, the Inspectors appointed under the Minimum Wages Act, 1948, shall be deemed to be Inspectors appointed under this Act for the area in which they exercise jurisdiction under the said Act.

6 Facilities to be afforded to Inspectors.—Every landowner shall afford an Inspector all reasonable facilities for making an entry, inspection, examination or inquiry under this Act.

CHAPTER III

SECURITY OF EMPLOYMENT AND WELFARE

7. Preference for employment as agricultural workers.—(1) The landowner shall not employ any agricultural worker other than an agricultural worker who has worked in the same land during the previous agricultural season:

Provided that preference shall be given to agricultural workers employed for the previous agricultural operation in the same agricultural land during the same agricultural season:

Provided further that where there are permanent workers of the landowner, such workers shall be given preference over other agricultural workers.

Explanation.—For the purposes of this sub-section, “permanent worker”, in relation to landowner, means an agricultural worker who is bound by custom or contract or otherwise to work in the agricultural land of that landowner.

(2) Notwithstanding anything contained in sub-section (1), where any agricultural worker has worked in the land of a landowner during three consecutive agricultural seasons prior to the previous agricultural season, he shall not be denied employment merely on the ground that he has not worked during the previous agricultural season, provided his absence during that season was due to reasons beyond his control.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be deemed to enable the landowner to refuse employment during an agricultural season to an agricultural worker eligible to be employed by the landowner under either of those sub-sections but who has not offered himself for employment on any previous day of that agricultural season.

(4) Where the agricultural workers mentioned in sub-section (1) or sub-section (2) or sub-section (3) are not available or the number of such agricultural workers available is less than the number required by the landowner for the agricultural operation in his land, nothing in those sub-sections shall be deemed to prevent him from employing other agricultural workers.

(5) Notwithstanding anything contained in the foregoing provisions of this section, no landowner shall be under an obligation to employ any agricultural worker—

- (a) who does not offer himself for employment; or
- (b) who is more than sixty-five years of age in case of a male worker or sixty years of age in the case of a female worker; or
- (c) who is incapacitated and is unable to do the work; or
- (d) who has intentionally caused damage of crops belonging to the landowner or caused any other loss to the landowner.

8. Establishment of Agricultural Workers' Provident Fund.—(1) The Central Government may, by notification in the Gazette, frame a scheme to be called the Agricultural Workers' Provident Fund Scheme for the establishment of a provident fund under this Act and there shall be established, as soon as may be after framing of the Scheme, a fund in accordance with the provisions of this Act and the Scheme

(2) The Fund shall vest in, and be administered by, a Board constituted under section 11.

(3) Subject to the provisions of this Act, the Scheme framed under sub-section (1) may provide for all or any of the matters specified in the Schedule.

(4) The Scheme framed under sub-section (1) shall be laid, as soon as may be after it is framed, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of

the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the Scheme, the Scheme shall thereafter have effect only in such modified form; so however that any such modification shall be without prejudice to the validity of anything previously done under the Scheme

9. Contributions to the Fund.—(1) The landowner shall pay contribution to the Fund at the rate of five per cent. of the wages paid by him to each agricultural worker employed by him.

(2) Each agricultural worker shall also pay contribution to the fund of an amount equal to the amount of contribution payable by the landowner under sub-section (1).

(3) Where the wages are payable in kind, the amount of contribution for the purposes of sub-section (1) and (2) shall be calculated at such commutation rate as may be notified by the Government in that behalf from time to time

10 Modification of Scheme—(1) The Central Government may, by notification in the Gazette, add to, amend or vary the Scheme.

(2) Every notification under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification

11. Constitution of Board—(1) The Central Government shall, by notification in the Gazette, constitute with effect from such date as may be specified in the notification a Board to be called the Agricultural Workers' Provident Fund Board for the administration of the Fund.

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of such number of members as the Government may determine and they shall be chosen in such manner as may be prescribed;

Provided that the number of members representing the Government, the landowners and the agricultural workers shall be equal.

(4) The Central Government shall appoint one of the members of the Board to be its Chairman

(5) The term of office of, and the manner of filling casual vacancies among, the members of the Board shall be such as may be prescribed.

(6) The names of the members and the Chairman shall be published in the Gazette.

(7) The Board shall administer the Fund in such manner as may be specified in the Scheme.

12 Appointment of officers for assisting the Board.—(1) The Central Government may appoint such number of officers as they think fit for assisting the Board in the administration of the Fund.

(2) The officers appointed under sub-section (1) shall exercise such powers and discharge duties as may be prescribed.

13. Directions by the Government.—(1) The Central Government may, after consultation with the Board, give to the Board general instructions to be followed by the Board, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees and the wages to be paid to the employees.

(2) In the exercise of its powers and performance of its duties under this Act or the Scheme, the Board shall not depart from any general instructions issued under sub-section (1), except with the previous permission of the Government.

14. Protection from attachment.—(1) The amount standing to the credit of any member in the Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member, and no receiver appointed under the Insolvency Act, 1955, shall be entitled to or have any claim on such amount.

(2) Any amount standing to the credit of a member in the Fund at the time of his death and payable to his nominee under the Scheme shall, subject to any deduction authorised by the Scheme, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member.

(3) Any amount standing to the credit of a member in the Fund at the time of his or her ceasing to be an agricultural worker, whether on the ground that he or she is over sixty-five or sixty years of age, as the case may be, or on the ground that he or she is incapacitated and is unable to work or on any other ground, shall, subject to any deduction authorised by the Scheme, be paid to him or her and shall be free from any debt or other liability incurred by that member before his or her ceasing to be an agricultural worker.

15. Landowner not to reduce wages etc.—No landowner shall by reason of his liability for the payment of any contribution to the Fund reduce whether directly or indirectly the wages of any agricultural worker to whom the scheme applies.

CHAPTER IV

HOURS AND LIMITATIONS OF EMPLOYMENT AND WAGES

16. Hours of work—Save as otherwise expressly provided in this Act, no adult agricultural worker shall be required to work for more than eight hours in any day and no adolescent or child for more than six hours in any day:

Provided that nothing contained in this section shall be deemed to prohibit an agreement between the landowner and the agricultural workers for working for less than eight hours or six hours, as the case may be, on any particular day or days or on all days of employment or to affect any custom or practice prevailing in the locality under which the agricultural worker is required to work for less than eight hours or six hours, as the case may be.

17. Daily intervals for rest.—The period of work on each day shall be so fixed that no period shall exceed four hours and that no agricultural worker shall work for more than four hours before he has had an interval for rest for at least half an hour.

18. Wages payable to agricultural workers.—(1) Every landowner shall pay to any agricultural worker employed by him the prescribed wages for each day of work done.

(2) The Central Government may, from time to time, by notification in the Gazette, fix the number of hours of work which shall constitute a normal working day for the purposes of sub-section (1) either for the whole State or any part thereof.

Provided that where the Central Government have fixed the number of hours of work which shall constitute a normal working day in respect of any of the categories of agricultural workers in the employment in agriculture under section 13 of the Minimum Wages Act, 1948, the hours of work so fixed shall, until a notification is issued under this sub-section, be deemed to have been fixed under this sub-section.

19. Wages for harvest.—(1) The prescribed wages for harvest shall be paid at the threshing floor on which the threshing takes place and no portion of the produce shall be removed from the threshing floor without payment of the prescribed wages to the agricultural worker concerned.

(2) Notwithstanding anything contained in sub-section (1) where the quantum of prescribed wages is in dispute and such quantum cannot be determined without settling the dispute under the provisions of this Act, an officer not below the rank of Tahsildar authorised in this behalf by the Central Government by notification in the Gazette shall, if he is satisfied that the harvested produce if kept in the threshing floor till the settlement of the dispute will perish or be otherwise lost, take such action as he thinks expedient in each case to ensure that the harvested produce does not perish or is not otherwise lost till the settlement of the dispute.

20. Enforcement of payment of prescribed wages.—(1) If any landowner pays less than the prescribed wages or refuses to pay the prescribed wages to any agricultural worker, the agricultural worker or an official of the union of which he is a member may make an application to the Conciliation Officer for a direction under sub-section (2).

(2) On receipt of an application under sub-section (1), the Conciliation Officer shall, after giving the applicant and the landowner an opportunity of being heard and after such inquiry, if any, which he may consider necessary, direct,—

(a) In the case of a claim arising out of the payment of less than the prescribed wages, the payment to the agricultural worker of the

amount by which the prescribed wages payable to him exceeds the amount actually paid by the landowner;

(b) in the case of a claim arising out of non-payment of prescribed wages, the payment of the prescribed wages to the agricultural worker.

(3) If as a result of a direction under sub-section (2) any amount of the prescribed wages becomes payable to an agricultural worker, the Conciliation Officer may,—

(a) in the case of harvest,—

(i) recover in kind such amount of the prescribed wages at the threshing floor from out of the harvested paddy; and

(ii) if the harvested paddy or any portion thereof has been removed from the threshing floor in contravention of the provisions of section 19, recover in kind the amount of prescribed wages from the landowner concerned and if such recovery is not possible, the Conciliation Officer shall make a report to the Collector specifying the full particulars regarding the amount or cash value of the prescribed wages due to the agricultural worker concerned and on receipt of such report, the Collector shall proceed to recover the same from the landowner concerned as if it were an arrear of public revenue due on land;

(b) in the case of any work other than harvest, recover in kind the amount of prescribed wages from the landowner concerned and if such recovery is not possible, the Conciliation Officer shall make a report to the Collector specifying the full particulars regarding the amount or cash value of the prescribed wages due to the agricultural worker concerned and on receipt of such report, the collector shall proceed to recover the same from the landowner concerned as if it were an arrear of public revenue due on land

Explanation.—In this sub-section “Collector” means the District Collector or any other officer appointed by the Government to exercise the powers and perform the functions of a Collector.

(4) The Conciliation Officer shall have such powers as are necessary to effect the payment of the prescribed wages to the agricultural worker, including the power to enter upon any land on which, or into any building in which, the harvested crop is kept.

21. Wages for over-time work—Where an agricultural worker is required by the landowner to work for more than the number of hours of work fixed or deemed to have been fixed under sub-section (2) of section 18, he shall be entitled in respect of each hour of such over-time work to wages at the rate of twice his ordinary rate of wages for one hour:

Provided that nothing contained in this section shall apply in respect of harvest or any work connected therewith.

CHAPTER V

DISPUTES

22. Settlement of agricultural disputes.—(1) Where an agricultural dispute exists or is apprehended, the Conciliation Officer may hold conciliation proceedings and shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the same and all matters affecting the merits and the right settlement thereof and may do all such things, as he thinks fit, for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matters in dispute is arrived at the course of conciliation proceedings, the Conciliation Officer shall send a report thereof to the District Labour Officer together with a memorandum of settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Conciliation Officer shall, as soon as practicable after the close of the investigation, send to the District Collector through the District Labour Officer a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at:

Provided that in a case where the agricultural dispute relates to an agricultural land situate within the local limits of more than one revenue district, the Conciliation Officer shall send the report to the District Collector in whose jurisdiction the major portion of such land is situate.

(4) If on a consideration of the report referred to in sub-section (3), the District Collector is satisfied that there is a case for reference to an Agricultural Tribunal, he may, by order in writing, refer the agricultural dispute to the said Tribunal for adjudication, and where the District Collector does not make such a reference, he shall record and communicate to the parties concerned his reasons therefor.

(5) Where an agricultural dispute has been referred to an Agricultural Tribunal under sub-section (4), the Tribunal shall hold its proceedings expeditiously and shall, as soon as practicable after the conclusion of the proceedings, but not later than thirty days from the date of receipt of the reference by the Tribunal, submit its award to the District Collector.

(6) The District Collector shall, within a period of fifteen days from the date of receipt of the award referred to in sub-section (5), cause the same to be published in his office and in the office of the Agricultural Tribunal in such manner as may be prescribed and shall also forward copies of the award to the parties concerned.

(7) An award referred to in sub-section (5) shall, subject to any order of the Government under section 26, become enforceable on the expiry of ten days from the date of its publication in the manner provided in sub-section (6).

(8) Every memorandum of settlement referred to in sub-section (2) and, subject to any order of the Government under section 26, every award of an Agricultural Tribunal shall be final and shall be given effect to by the parties to the agricultural dispute.

23. Appeal.—Against any order passed by a Conciliation Officer under section 20, an appeal shall lie to the Agricultural Tribunal within a period of thirty days from the date of the order appealed against, and the decision of the Agricultural Tribunal on such appeal shall be final.

(2) The Agricultural Tribunal shall have no power to stay the operation of the order of the Conciliation Officer pending disposal of the appeal.

24. Decision in appeal in respect of prescribed wages to be given effect to.—(1) Where the amount of prescribed wages paid to an agricultural worker under section 18 or recovered under section 20 for payment to an agricultural worker is less than the amount of prescribed wages payable as result of the decision in appeal, the balance shall be recovered from the landowner concerned as if it were an arrear of public revenue due on land and paid to the agricultural worker concerned.

(2) Where the amount of prescribed wages paid to an agricultural worker under section 18 or recovered under section 20 for payment to an agricultural worker is in excess of the amount of prescribed wages payable as a result of the decision in appeal, such excess shall be recovered from the agricultural worker concerned for payment to the landowner concerned and the provisions of section 39 shall apply to such recovery.

25 Reference or decision of disputes by Government.—(1) Notwithstanding anything contained in section 22, where any agricultural dispute exists or is apprehended, the Central Government may, by order in writing and for reasons to be stated therein,—

(a) refer the dispute to the Agricultural Tribunal constituted for the area in which the dispute exists or is apprehended, for adjudication; or

(b) decide the dispute themselves and pass an award

(2) Where a dispute is referred to an Agricultural Tribunal under clause (a) of sub-section (1), the provisions of sub-section (5), (6), (7) and (8) of section 22 shall apply as if the reference to the Tribunal were made by the District Collector under sub-section (4) of that section

(3) The Central Government shall cause every award passed by them under clause (b) of sub-section (1) to be published in the Gazette and in such other manner as may be prescribed

(4) An award referred to in sub-section (3) shall be final, shall be given effect to by the parties to the agricultural dispute and shall be enforceable on the expiry of five days from the date of its publication in the Gazette.

26. Power of Government as respects awards.—If the Central Government are of opinion that it is inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of an award referred to in sub-section (5) of section 22, they may, by notification in the Gazette, declare that the award shall not become enforceable on the expiry of the period mentioned in sub-section (7) of the said section.

(2) Where any declaration has been made in relation to an award under sub-section (1), the Central Government may, within thirty days from the date of publication of the award under sub-section (6) of section 22, make an order rejecting or modifying the award, and such order shall be published in the Gazette.

(3) Where no order has been passed by the Government under sub-section (2), the award shall not be enforceable or, as the case may be, period of thirty days mentioned in that sub-section

(4) Where an order has been made by the Government under sub-section (2), the award shall not be enforceable or, as the case may be, the award as modified shall be enforceable on the expiry of a period of five days from the date of publication of such order in the Gazette.

CHAPTER VI

PENALTIES AND PROCEDURE

27. Penalty for Obstructions, etc.—Whoever obstructs any Inspector or Conciliation Officer in the discharge of his duties under this Act or refuses or wilfully neglects to afford any Inspector reasonable facilities for making an inspection, examination or inquiry authorised by or under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reasons to believe is likely to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

28. Penalty for Making False Statements, etc.—Whoever for the purpose of avoiding any payment to be made by him under this Act or under the Scheme or for enabling any other person to avoid such payment, knowingly, makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

29. Penalty for Breach of Settlement or Award.—Any person who commits a breach of any term of any settlement or award shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, where the breach is a continuing one, with a further fine which may extend to one hundred rupees for every day during which the breach continues after conviction for the first such breach, and the court trying the offence may direct that the whole or any part of the fine realised from him shall be paid by way of compensation to any person who in its opinion has been injured by such breach.

30. Other Penalties.—Whoever contravenes or makes default in complying with any of the provisions of this Act or the Scheme or of any rule made under this Act shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

31. Enhanced Penalty after previous conviction.—If any person who has been convicted of any offence punishable under this Act is again found guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month, but which may extend to six months and with fine which shall not be less than five hundred rupees, but which may extend to two thousand rupees:

Provided that for the purposes of this section, no cognizance shall be taken of any conviction made more than five years before the commission of the offence which is being punished.

32. Offences by Companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time of offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the Commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

33. Cognizance of offences.—No court shall take cognizance of any offence punishable under this Act, except on complaint made by, or with the previous sanction in writing of, the Government or an officer authorised by the Government in this behalf by notification in the Gazette, and no court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act

34. Limitation of prosecutions.—No court shall take cognizance of an offence punishable under this Act unless complaint thereof is made within three months from the date on which the alleged commission of the offence comes to the knowledge of the Government or the officer authorised under section 33.

CHAPTER VII

MISCELLANEOUS

35. Register of agricultural workers.—(1) The executive authority of every local authority shall prepare a register of agricultural workers residing within the jurisdiction of that local authority.

(2) The register shall contain such particulars as may be prescribed.

(3) The register shall be maintained by the executive authority in such manner as may be prescribed.

36. Maintenance of Registers and records by landowners.—(1) Every landowner shall maintain such registers and record as may be prescribed.

(2) The registers and records referred to in sub-section (1) shall contain such particulars and shall be kept in such place, as may be prescribed.

37. Bar of Jurisdiction of civil courts—No civil court entertain any suit of other proceedings to set aside or modify any order or decision passed by any authority or officer under this Act in respect of any of the matters falling within its or his scope.

38. Power to take evidence on oath etc.—Any authority or officer exercising powers under this Act shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely. —

- (a) enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents,
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses, and
- (e) such other matters as may be prescribed,

and any proceeding before such authority or officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196, of the Indian Penal Code.

39. Recovery of Money due from landowners.—(1) Where any money is due to an agricultural worker from a landowner under a settlement referred to in sub-section (2) of section 22, or an award under sub-section (5) of that section or under clause (b) of sub-section (1) of section 25 or an award as modified by the Government under sub-section (2) of section 26, the agricultural worker himself or any other person authorised by him in writing in that behalf or, in the case of the death of the agricultural worker, his assignees or heirs may without prejudice to any other mode of recovery make an application to the District Col-

lector for the recovery of the money due to him and if the District Collector is satisfied that any money is so due, he shall proceed to recover the same as if it were an arrear of public revenue due on land:

Provided that every such application shall be made within one year from the date on which the money became due to the agricultural worker from the landowner.

Provided further that any such application may be entertained after the expiry of the said period of one year if the District Collector is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Any amount due from a landowner as contribution to the Fund any other amount due from a landowner under this Act or the Scheme may, if the amount is arrear, be recovered as if it were an arrear of public revenue due on land.

40. Power to recover damages.—Where a landowner makes default in the payment of any contribution to the Fund, the Government may recover from him such damages, not exceeding twenty-five per cent of the amount of arrears, as they think fit.

41. Effect of laws and agreements in consistent with this Act and Scheme—(1) The provisions of this Act and the Scheme shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this section:

Provided that where under any such award, agreement, contract of service custom or otherwise, any agricultural worker was enjoying immediately before the commencement of this section benefits in respect of any matter, which are more favourable to him than those to which he would be entitled under this Act, the agricultural worker shall be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any agricultural worker from entering into an agreement with a landowner for granting him rights or privileges in respect of any matter, which are more favourable to him than those to which he would be entitled under this Act.

(3) For the avoidance of doubts, it is hereby declared that nothing contained in sub-section (1) or sub-section (2) shall be deemed to enable a landowner to enter into any agreement in contravention of the provisions of section 7.

42. Exemption.—(1) Nothing contained in this Act other than sections 18, 20, 23, 24, clause (b) of sub-section (1) and sub-sections (3) and (4) of section 25 and sub-section (1) of section 41 shall apply in relation to a landowner who does not hold more than one hectare in extent of land.

Explanation—Where the landowner is a member of a family, the extent of land held individually by any member of his family or jointly by some or all of the members of such family shall, for the purposes of this sub-section be deemed to held by the landowner.

(2) The Central Government may, by notification in the Gazette, for reasons to be recorded in writing, exempt any landowner or class of landowners or any agricultural land or class of agricultural lands from all or any of the provisions of this Act.

43. Delegation of powers.—The Central Government may, by notification in the Gazette, direct that any power exercisable by them under this Act or the rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by such officer or authority subordinate to the Government as may be specified in the notification.

45 of 1860. **44 Members of Board, etc., to be public servants**—Every member of the Board and every officer appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45. Power to remove difficulties—If any difficulty arises in giving effect to the provisions of this Act or the Scheme or any award or settlement under this Act, the Government may, by order, do anything not inconsistent with such provisions which appears to them necessary or expedient for the purpose of removing the difficulty.

46. Protection of action taken in good faith.—No suit prosecution or other legal proceeding shall lie against the Government or any authority or officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or the Scheme or any rule or order made under this Act

47. Power to make rules.—(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the procedure to be followed by the Conciliation Officer and the Agricultural Tribunal;

(b) the fees to be paid for applications and appeals under this Act;

(c) the powers of the Conciliation Officer necessary for the effective enforcement of the provisions of this Act;

(d) the manner of estimating the cash value of the prescribed wages in kind;

(e) the procedure to be followed by the Government under sections 25 and 26,

(f) any other matter which has to be, or may be, prescribed under the provisions of this Act.

(3) Every rule made under this section and every notification issued under section 45 shall be laid, as soon as may be after it is made or issued, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or notification both Houses

agree that the rule or notification should not be made or issued, the rule or notification, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, or notification.

THE SCHEDULE

[See sub-section (3) of section 8]

1. The time and manner in which the contributions shall be paid to the Fund by the employers.
2. The manner in which the employees' contributions may be collected by the employers and remitted to the Fund.
3. The number of members of the Agricultural Workers' Provident Fund Board and their term of office.
4. The manner in which the members are to be appointed and removed.
5. The manner in which the Chairman of the Board is to be appointed.
6. The Constitution of committees for assisting the working of the Board.
7. The manner in which the accounts shall be kept, the accumulation in the Fund invested, the accounts audited, etc.
8. The manner in which periodical reports are to be submitted to the Government by the Board regarding the working of the Board.
9. Conditions under which withdrawal from the Fund and any deduction or forfeiture therefrom may be made and the maximum amount of deduction or forfeiture
10. The fixation of annual rate of interest payable to the members of the Fund by the Board in consultation with the Government.
11. The form in which the employees shall furnish particulars of himself and his family.
12. The nomination of any person or persons to receive the amount at the credit of a member on his death and the cancellation or alteration of such nomination.
13. Registers and records to be maintained by the employers and the returns to be furnished by them
14. The powers, if any, which may be exercised by the Officers appointed under this Act for the administration of the Scheme.
15. The conditions of service, duties and remuneration of officers working under the Board.
16. Any other matter which is to be provided for in the Scheme for the purpose of implementing the Scheme.

STATEMENT OF OBJECTS AND REASONS

At present there is no legislation covering agricultural workers except the Minimum Wages Act, 1948. Under this Act, minimum rates of wages of agricultural workers are fixed or revised from time to time. It is considered necessary to make statutory provisions conferring benefits on agricultural workers, such as security of employment, payment of wages higher than those fixed or revised under the Minimum Wages Act in deserving cases and regulation of hours of work. It is also considered necessary to provide for the constitution of an Agricultural Workers Welfare Fund.

In certain cases, settlement of disputes concerning agricultural workers are being settled through voluntary arrangements. But, such arrangements have proved to be ineffective. It is therefore considered necessary to make statutory provisions on the lines of those contained in the Industrial Disputes Act, 1947 for settlement of disputes concerning agricultural workers.

NEW DELHI;

CHITTA BASU.

The 23rd May, 1977.

FINANCIAL MEMORANDUM

The following provisions of the Bill, if enacted, will involve expenditure from the Consolidated Fund of India:—

Clause 4: Constitution of Agricultural Tribunals.

Clause 5: Appointment of Inspectors.

Clause 11: Constitution of Agricultural Workers' Provident Fund Board.

Clause 12: Appointment of officers for assisting the Board.

It will be the responsibility of the Central Government to bear the expenditure involved in the Union territories. A recurring expenditure of about Rs. 20 lakhs is likely to be involved.

A non-recurring expenditure of about 5 lakhs of rupees is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 47 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill. Sub-clause (2) of that clause enumerates the matters in regard to which rules may be made. There are matters of detail and could hardly be provided in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 56 OF 1977

A Bill to provide for the restoration of the settlements arrived at between Life Insurance Corporation of India and All India Life Insurance Corporation Employees Federation and other Unions.

BE it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Life Insurance Corporation (Restoration of Settlements) Act, 1977.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) "Corporation" means the Life Insurance Corporation of India established under section 3 of Life Insurance Corporation Act, 1956; 31 of 1956.

(b) "salary" means basic pay and includes—

- (i) special pay, if any;
- (ii) dearness allowance; and
- (iii) additional dearness allowance;

(c) "settlement" means,—

(i) the settlement arrived at between the Corporation and their workmen on the 24th day of January, 1974, under section 18, read with clause (p) of section 2, of the Industrial Disputes Act, 1947; and

(ii) the settlement which was arrived at between the Corporation and their workmen on the 6th day of February, 1974 under section 18, read with clause (p) of section 2, of the said Act and in respect of the terms of which there was no approval as provided for in sub-clause (2) of clause 12 thereof.

14 of 1947,

72 of 1976

3 Notwithstanding anything contained in the Life Insurance Corporation (Modification of Settlements) Act, 1976, the provisions of each of the settlements in respect of payment of annual cash bonus to every class III and class IV employees of the Corporation at the rate of fifteen per cent of his annual salary shall have full force and effect thereof with retrospective effect from the 1st day of April, 1975 as if the Life Insurance Corporation (Modification of Settlements) Act, 1976 had not been enacted.

72 of 1976

Restoration of settlement.

STATEMENT OF OBJECTS AND REASONS

The Life Insurance Corporation (Modification of Settlements) Act, 1976 was enacted to annul the provisions of the settlements arrived at between the Corporation and its workmen in so far as they related to the payment of annual cash bonus to its class III and class IV employees at the rate of fifteen per cent. of their annual salary with effect from 1st April, 1975. The consequence of the enactment of the aforesaid Act was that class III and class IV employees of Life Insurance Corporation of India were deprived of the payment of annual cash bonus in spite of the same having been agreed to by and between Life Insurance Corporation of India and its workmen with the previous approval of Government of India.

It is proposed to restore with effect from 1st April, 1975 these provisions of the settlements arrived at between the Corporation and its class III and class IV employees on the 24th January, 1974 and 6th February, 1974 to enable the Corporation to make payment of annual cash bonus to its employees in terms of the settlements.

NEW DELHI;
The 28th May, 1977.

PARVATHI KRISHNAN.

AVTAR SINGH RIKHY,
Secretary.